



# CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Approve Request For Proposals and Authorize Advertisement for Contract Services For the Update and Implementation of the Development Code.

**MEETING DATE:** September 7, 2011

**PREPARED BY:** Community Development Department

**RECOMMENDED ACTION:** Approve Request for Proposals and authorize advertisement for contract services for the update and implementation of the Development Code.

**BACKGROUND INFORMATION:** The City is seeking proposals from qualified organizations, individuals and firms to assist in the completion of the update and implementation of the Development Code.

In 1999, a consultant was retained to prepare an updated Zoning Ordinance for the City. They worked with City staff and the Planning Commission to determine what the City wanted in a new Development Code, and what issues or problems the City had with the existing Zoning Ordinance. One of the early directions they received from the City was to prepare a document that would retain some semblance with the current zoning code and one that would not be a radical departure from the current zoning practices. This was done for a number of reasons. First, the City **did** not want to make radical changes that would result in major portions of the City's existing uses or buildings becoming nonconforming or in major conflict with the new ordinance. Second, the City wanted to maintain a development pattern that would still be compatible with existing development in the City, particularly residential development. The City was looking for a Development Code that was more evolutionary **as** opposed to revolutionary in nature. The City hoped to update and upgrade the ordinance while still retaining development concepts that have made Lodi a special place.

Based on this direction, the consultants went through the existing zoning ordinance chapter by chapter and suggested changes or ways to improve the document. This included greatly expanding and updating the list of definitions; adding numerous tables and illustrations to help explain zoning and planning concepts; changing or adding regulatory standards to address current development issues faced by the City; and reorganizing the document to make it easier to comprehend and making it more user-friendly. Additionally, the document codifies procedural issues to help the public navigate the sometimes complex planning and zoning process.

City staff reviewed these suggestions and added their own comments and ideas. Following numerous reviews and rewrites, the consultants prepared a series of draft chapters of the document for review by the City. The individual chapters were brought before the Planning Commission for their input and

APPROVED:   
Konradt Bartlam, City Manager

suggestions over a period of a year or so. Based on the Planning Commission's discussions, their ideas and suggestions for changes were incorporated into the document.

Finally, a preliminary draft Development Code was being prepared by the consultant in 2003. City staff was in the process of conducting a final review of the draft Development Code and working on a program to begin a public review and discussion process prior to the eventual adoption of the document by the Planning Commission and the City Council. At this stage of the process, the City decided to temporarily halt the project and stop further work on the new Development Code. The reason for suspending the work was two-fold. First, the City was in the middle of a hiring freeze and was experiencing serious staffing shortages, compounded by the departure of some key departmental staff including the Planning Manager and the Community Development Director. Because of a shortage of staff, staff determined that they could not deal with both this project and the other day to day workload that required staffs attention. Second, during this same period, the City was experiencing significant budgetary constraints and it determined that the City's limited resources could be better spent on other projects.

Fundamentally, if the process were to have continued, the next steps would be to conduct the public review process and reflect subsequent changes into a final Development Code. That copy would undergo a review process to insure its consistency with the General Plan and an Initial Study/Negative Declaration would most likely be prepared, circulated, and recorded. The final steps would be accepting the Negative Declaration as adequate environmental documentation and adopting the new Development Code.

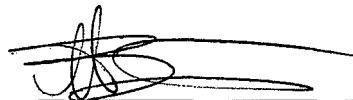
One of the key driving forces for the completion of this update is that the zoning ordinance has certain inconsistencies with the **City's** current General Plan, which was just adopted in 2010 and which introduced new land use classifications for all land use categories throughout the City. These land use categories are not consistent with the existing Zoning Ordinance, and since the General Plan prevails, this can create confusion in the interpretation of the standards for development.

**FISCAL IMPACT:**

Staff time spent on this project goes toward the City's required in-kind contribution as matching funds.

**FUNDING AVAILABLE:**

The project estimate of \$52,000 is funded through the Sustainable Communities Planning Grant. A request for appropriation of funds will be made at award of contract.



Konradt Bartlam  
Community Development Director

KB/jw

Attachment

# **REQUEST FOR PROPOSALS**

## **CITY OF LODI, CALIFORNIA**

### DEVELOPMENT CODE UPDATE



September 7, 2011

Schedule:

Proposal Due Date:	September 29, 2011
Award of Agreement:	November 2, 2011
Projected Agreement Start Date:	December 1, 2011
Project Completion Deadline:	April 1, 2013

Contact:

Joseph Wood, Neighborhood Services Manager  
City of Lodi Community Development Department  
221 W. Pine Street  
Lodi, CA 95240  
Phone: 209-333-6800 x2467  
E: [jwood@lodi.gov](mailto:jwood@lodi.gov)

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## **I. Introduction**

The City of Lodi (“City”) is requesting proposals from qualified organizations, firms and individuals to assist the City in the update and implementation of the Development Code.

The current Zoning Ordinance was adopted in the mid-1950s and was the City’s first comprehensive zoning ordinance. Because of the age of the document, some of the concepts and standards are out of date. Regulations related to development standards including setbacks, densities, lot coverage, etc. that worked 50-years ago do not relate as well to current development practices. Additionally, amendments have been made to various sections of the ordinance over the years to try to address specific planning and zoning issues as well as conform to changes in state law. These changes have created internal inconsistencies in the ordinance and have made it increasingly difficult for City staff and the public to utilize the current zoning ordinance. Lastly, the zoning ordinance has certain inconsistencies with the City’s current General Plan, which was just adopted in 2010 and which introduced new land use classifications for all land use categories throughout the City, which are not consistent with the existing Zoning Ordinance. Since the General Plan prevails, this can create confusion in the interpretation of the standards for development.

In 1999, a consultant was retained to prepare an updated Zoning Ordinance for the City. The consultants began the process of preparing a new Development Code shortly after being awarded the contract. They worked with City staff and the Planning Commission to determine what the City wanted in a new Development Code, and what issues or problems the City had with the existing Zoning Ordinance. One of the early directions they received from the City was to prepare a document that would retain some semblance with the current zoning code and one that would not be a radical departure from the current zoning practices. This was done for a number of reasons. First, the City did not want to make radical changes that would result in major portions of the City’s existing uses or buildings becoming nonconforming or in major conflict with the new ordinance. Second, the City wanted to maintain a development pattern that would still be compatible with existing development in the City, particularly residential development. The City was looking for a Development Code that was more evolutionary as opposed to revolutionary in nature. The City hoped to update and upgrade the ordinance while still retaining development concepts that have made Lodi a special place.

Based on this direction, the consultants went through the existing zoning ordinance chapter by chapter and suggested changes or ways to improve the document. This included greatly expanding and updating the list of definitions; adding numerous tables and illustrations to help explain zoning and planning concepts; changing or adding regulatory standards to address current development issues faced by the City; and reorganizing the document to make it easier to comprehend and making it more user-friendly. Additionally, the document codifies procedural issues to help the public navigate the sometimes complex planning and zoning process.

City staff reviewed these suggestions and added their own comments and ideas. Following numerous reviews and rewrites, the consultants prepared a series of draft chapters of the document for review by the City. The individual chapters were brought before the Planning Commission for their input and suggestions over a period of a year or so. Based on the Planning Commission's discussions, their ideas and suggestions for changes were incorporated into the document. Finally, a preliminary draft Development Code was being prepared by the consultant in 2003. City staff was in the process of conducting a final review of the draft Development Code and working on a program to begin a public review and discussion process prior to the eventual adoption of the document by the Planning Commission and the City Council. It was at this stage of the process in 2006 that the City decided to temporarily halt the project and stop further work on the new Development Code. The reason for suspending the work was two-fold. First, the City was in the middle of a hiring freeze and was experiencing serious staffing shortages, compounded by the departure of some key departmental staff including the Planning Manager and the Community Development Director. Because of a shortage of staff, staff determined that they could not deal with both this project and the other day to day workload that required staff's attention. Second, during this same period, the City was experiencing significant budgetary constraints and it determined that the City's limited resources could be better spent on other projects.

## **II. Scope of Services**

The budget for the following scope of services is \$120,000

Fundamentally, if the process were to have continued in 2006, the next steps would be to conduct the public review process and reflect subsequent changes into a final Development Code. That copy would undergo a review process to insure its consistency with the General Plan and an Initial Study/Negative Declaration would most likely be prepared, circulated, and recorded. The final steps would be accepting the Negative Declaration as adequate environmental documentation and adopting the new Development Code. However, with the recent adoption of the General Plan Update, as well as the amount of time that has passed since this update was last worked on, the proposed Work Plan for the Development Code Update Project should include the following

### **Task 1 – Document Review**

A review of the various draft documents last submitted in February 2006 should consider that while the footer on those documents contains a date of 2/06, the material within may date back to as early as October 1999. The consultant will meet and work with City staff to review the City's direction and expectations, as well as any issues associated with the existing Preliminary Draft document (e.g., Child Day Care Facilities, Second Dwelling Units, Subdivision Ordinance Provisions, etc.). Any new materials that staff may want added to the draft Development Code (e.g., Affordable Housing Density Bonus Provisions) should also be considered, as well as any actual built conditions within the

community that should be either discouraged or encouraged in the new Development Code.

A product of this task will be a detailed list of items that will require special attention or additional work in the revision of the Preliminary Draft.

### **Task 2 - Revise Preliminary Draft Development Code**

The consultant will prepare a draft of all updated and/or new materials identified in Task 1 that is to be included in the Revised Draft Development Code document and proceed to incorporate those materials into the document. Any necessary graphics and illustrations should be included at that point. The consultant will present their materials to City staff for review through the course of preparing the revised draft document to ensure that all suggested and/or requested items have been included.

A product of this task is the Revised Draft Development Code.

### **Task 3 - Public Review of New Draft Development Code**

At least one public meeting (goal of 50 - 100 attendees) shall be conducted to engage the general public and industry shareholders as soon as possible after the Draft Development Code has been completed. The purpose of this meeting will be to share the document and gather comments and ideas from the public. This meeting will be noticed by direct mail to all households in the City, as well as through ads in the local paper and contacts through local service agencies and business organizations. Comments from people who can't attend the meeting will be solicited and encouraged; an opt-in e-mail list of interested parties will be created; pages on the City website will be posted with public information about the project.

Additional outreach efforts may include but not be limited to: direct mail, newspaper ads, website postings, postings on the local public access channel, and active use of local social service agencies and service clubs.

At least one additional dedicated public meeting will be held. Other creative methods of civic engagement are welcome.

### **Task 4 - Planning Commission Review**

At least two public hearings before the Planning Commission are anticipated and will require the preparation of presentation materials (i.e, PowerPoint, maps, etc.). The consultant will be expected to be available to answer questions about proposed revisions and alternatives, as well as draft revised language in response to staff or Commission direction.

## **Task 5 - City Council Review/Adoption**

There will be at least one informational study session with the City Council before the two public hearings are held. The consultant shall assist City staff in preparation for those presentations and may be asked to attend the informational sessions to answer questions.

Upon the City Council's adoption of the Development Code, the consultant shall assist City staff in preparing the Development Code in the appropriate formats for publication and display.

### **III. Proposal Format**

All proposals shall include the following information, at a minimum:

**Approach:** A short discussion of the intended approach to the project that demonstrates the respondent understands of the issues and tasks, and the respondent's ability to address them.

**Qualifications:** Provide an outline of the individual's/organization's qualifications, relevant background experience, and capacity for this work. Provide a list of current and prospective major projects to which the organization is committed during the time frame of this project. Include the staff resources devoted to those projects, and their status.

**Scope of Work:** The proposal should explain how the consultant plans to approach and complete each work task. Consultants must demonstrate that they understand the subtleties and magnitude of each individual task. The listed deliverables should be incorporated into the consultant's approach.

**Proposed Project Schedule:** The proposal shall include a schedule to undertake the work program. The project is anticipated to start around December 1, 2011 and must be completed by April 1, 2013, at the latest.

**Proposed Budget:** Indicate the costs and hours for the total project, on a task-by-task basis, inclusive of reimbursables. Prices quoted must be binding for a minimum of 150 days. The project budget is \$52,000. If the consultant believes that the scope of services cannot be done for \$52,000 or less, it may choose to submit a lesser scope, which must clearly identify those elements of the scope that are not included and how the consultant suggests they be accomplished given their importance to the overall project. Proposals with a lesser scope must include that information at the beginning of the submittal.

**References, Related Experience and Examples of Work:** Provide at least three client references, as many of whom as possible are public sector representatives, for relevant work. Specify the client, location, consultant's participating individuals and their role on the team, type of work, implementation results or status, work samples, and other



relevant information as needed. Include current phone numbers and e-mail addresses for the references.

Standard Contract: Consultants should review the attached standard contract prior to preparing a submittal, and include any exceptions or questions regarding it in their proposals.

#### **IV. Selection Process**

Qualifications: the City will evaluate all proposals received by the due date. Only information that is received in response to the RFP or any subsequent interview will be evaluated. The City will judge the responses of each proposing organization in several critical areas. Selected consultants may be invited to an interview at the City's discretion.

Selection Criteria: The City will select the most qualified proposal based on the following factors. Responses to the RFP should address the following qualities and indicators.

1. Ability of the Organization to Design an Approach and Work Plan to Meet the Project Requirements.

An assessment of the overall quality of the proposal. Qualities and indicators that will receive consideration include the consultant's performance in converting the Scope of Services into a work plan; the detail and clarity of the discussion as to the consultant's approach to undertaking the Development Code update; the consultant's performance in identifying any special problems or concerns which may be associated with the project and preliminary ideas about how these obstacles should be addressed; the inclusion of any unique approaches which are designed to save time and money or increase the benefits or effectiveness of the proposed work; and the demonstrated ability to work with local governmental agencies and a full understanding of applicable laws or regulations that relate to the project.

2. Ability of the Consultant to Carry Out and Manage the Proposed Project.

An assessment of past experience of the consultant in general. Qualities and indicators that will receive consideration include the number and types of similar projects that the consultant has completed; the variety of projects completed and a demonstration of the consultant's ability to undertake this project; the ability to realize schedule and quality control objectives; the past ability of the consultant to deliver projects on a timely basis; and the demonstrated ability to successfully complete its managed projects.

3. Capabilities of the Consultant Organization and/or Team.

An assessment of the capabilities of the consultant, their organization or team that will be engaged in the project. Qualities and indicators that will receive consideration include the individual professionals who will be working on each task; the various professional and technical achievements of each organization and key individuals involved; the applicable experience of the proposed assigned staff, and their specific experience gained on similar projects.

4. Current Workload of the Consultant Organization and/or Team.

An assessment of the perceived ability to devote the necessary human resources and management attention to the project. Qualities and indicators that will receive consideration include the number and size of the projects presently being performed; the status of existing projects; and the nature of the existing projects that are behind schedule or past the completion date.

5. The Consultant and/or Team's Proximity to the Project.

An assessment of the project team's availability. Qualities and indicators that will receive consideration include team's geographic proximity to Lodi; the location of the office/institutions from which the proposed project will be administered; the proposed response time and general availability of the consultant's management to be on site as needed, the effect that project management location will have on price and the ability of the project to be completed on a timely basis; and the availability of special travel or communication plans which would mitigate difficulties associated with location.

6. Willingness to Comply with the Proposed Agreement Terms.

A sample agreement is attached. Proposals will be rated based on the exceptions taken to the proposed agreement.

7. Cost of Proposal.

Cost, while not determinative if not exceeding \$52,000 for the full scope of services, will be considered in the selection process. Consultants submitting a lesser scope (as described in Section 3 above) should explain the financial reasons for that decision in this section.

**V. Proposal Due Date and Delivery**

Submit one (1) original and one (1) electronic copy of the proposal no later than 4:00 PM on September 29, 2011 to the address below. Copies should be submitted electronically in Microsoft Word or Adobe Acrobat file format, either with the original or via e-mail to Joseph Wood ([jwood@lodi.gov](mailto:jwood@lodi.gov)) by the deadline date and time. All complete proposals received by then will be considered; postmarks not accepted. Proposals will not be accepted after the deadline. Please note that e-mail is only considered received if it is acknowledged by a return e-mail sent by the due date. Proposals should be addressed to:

Joseph Wood, Neighborhood Services Manager  
City of Lodi Community Development Department  
221 W. Pine Street  
Lodi, CA 95240  
Phone: 209-333-6800 x2467  
E: [jwood@lodi.gov](mailto:jwood@lodi.gov)

# EXHIBIT A

## AGREEMENT FOR PROFESSIONAL SERVICES

### ARTICLE 1 PARTIES AND PURPOSE

#### Section 1.1 Parties

THIS AGREEMENT is entered into on \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and \_\_\_\_\_ (hereinafter "CONTRACTOR").

#### Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for

(hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

### ARTICLE 2 SCOPE OF SERVICES

#### Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

#### Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

### **Section 2.3 Meetings**

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

### **Section 2.4 Staffing**

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

### **Section 2.5 Subcontracts**

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

### **Section 2.6 Term**

The term of this Agreement commences on \_\_\_\_\_, 20\_\_\_\_ and terminates upon the completion of the Scope of Services or on \_\_\_\_\_, 20\_\_\_\_, whichever occurs first.

### **ARTICLE 3 COMPENSATION**

#### **Section 3.1    Compensation**

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

#### **Section 3.2    Method of Payment**

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

#### **Section 3.3    Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

#### **Section 3.4    Auditing**

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with

this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

## **ARTICLE 4**

### **MISCELLANEOUS PROVISIONS**

#### **Section 4.1    Nondiscrimination**

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

#### **Section 4.2    ADA Compliance**

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

#### **Section 4.3    Indemnification and Responsibility for Damage**

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

#### **Section 4.4    No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

**Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

**Section 4.6 Insurance Requirements for CONTRACTOR**

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

**Section 4.7 Successors and Assigns**

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

**Section 4.8 Notices**

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY:                      City of Lodi  
                                     221 West Pine Street  
                                     P.O. Box 3006  
                                     Lodi, CA 95241-1910  
                                     Attn: Joseph Wood, Neighborhood Services Manager

To CONTRACTOR:

**Section 4.9 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

**Section 4.10 CONTRACTOR is Not an Employee of CITY**

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not

an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

**Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

**Section 4.12 Confidentiality**

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

**Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City Business License Requirement**



CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Severability**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**Section 4.19 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.20 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

**Section 4.21 Federal Transit Funding Conditions**

☐ If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit \_\_\_\_\_ apply to this contract. In the event of a conflict between the terms of this contract or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

**IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.**

CITY OF LODI, a municipal corporation

ATTEST:

\_\_\_\_\_  
RANDI JOHL  
City Clerk

\_\_\_\_\_  
KONRADT BARTLAM, City Manager

APPROVED AS TO FORM:  
D. STEPHEN SCHWABAUER, City Attorney  
JANICE D. MAGDICH, Deputy City Attorney

CONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

**Attachments:**  
**Exhibit A – Scope of Services**  
**Exhibit B – Fee Proposal**  
**Exhibit C – Insurance Requirements**



**Insurance Requirements for Contractor** The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- |  |  |
|--|--|
| 1. <u>COMPREHENSIVE GENERAL LIABILITY</u>                                    | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u> |
| \$1,000,000 Ea. Occurrence   | \$1,000,000 Bodily Injury - Ea. Person       |
|  | \$1,000,000 Bodily Injury - Ea. Occurrence   |
| \$2,000,000 Aggregate  | \$1,000,000 Property Damage - Ea. Occurrence |
| 3. <u>PROFESSIONAL ERRORS AND OMISSIONS</u>                                  |  |
| Not less than \$1,000,000 per Claim. Certificate of Insurance only required. |  |

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

**NOTE:** (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement  
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.  
  
(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement  
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Severability of Interest Clause  
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) Notice of Cancellation or Change in Coverage Endorsement  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

**Compensation Insurance** The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

NOTE: No contract agreement will be signed nor will **any** work begin on a project until the proper insurance certificate is received by the City.